

14 August 1978

STATINTL

MEMORANDUM FOR: [REDACTED]
Assistant for Information/DDA

FROM : [REDACTED]
Associate General Counsel

STATINTL

SUBJECT : Report of the Privacy Protection
Study Commission

We have only a few suggestions concerning the proposed letter to Rick Neustadt which comments on a copy of the draft response memorandum to the report of the Privacy Protection Study Commission.

a. I would think we should not refer to the needs of law enforcement agencies and programs, as in the first paragraph and in the response to question 2. While we do comment in areas where the Agency has no responsibility, I should think the statutory bar to law enforcement activities makes that area a special problem.

b. Are we not inconsistent in our response to Part V A in taking no position on the use of the polygraph but pointing out that we need the polygraph? Also, should we not comment on the statement that Civil Service regulations prohibit use by the Federal Government?

c. I would not think the issues inherent in No. 8, in Part III, would elevate that one to require presidential attention.

STATINTL

[REDACTED]

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

DATE: 9/18

ILLEGIB

TO:

[REDACTED]

/IPS Jaw
new

FROM:

Leslie Breonspan

*per our conversation -
the other agencies have
indicated they have no
problems with these
papers -*

Rec'd 10/11/78
[Signature]

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8/11/78

NOTE FOR: Mr. Blake

FROM: [REDACTED]

The following comments may assist you in determining the significance of the choices reflected in the attached memorandum on the Presidential Privacy Initiative.

The first series^{of notes} concerns Part III:

page 102
No. 1 - The Privacy Commission made much of the desirability of insisting upon the use of the subpoena power or other formal procedures for compelling disclosure. They recognized, however, that many government organizations which need information have no subpoena authority. The choice offered us here is between a requirement that access to records "in which the individual has an expectation of confidentiality" must be through some compulsory (subpoena) process, or permission to obtain information simply by asking for it in formal written fashion. (The reference to "expectation of confidentiality" refers to a complex formula which is described on page 34-35 of the draft memorandum. The distinction is mainly procedural involving a commitment by an organization to protect the confidentiality of information provided by an individual.)

p 104
No. 2 - The question here has to do with the nature of the judicial standard which can be employed by an individual. In order to make the government justify its request for access for information, the Commission would place the burden on the government. The Justice/Treasury position, which we should support, places the burden on the individual. I found no merit in the compromise which places the burden on the government to show a relationship between the request and on-going investigation of a violation of law.

p 108
No. 3 - The question here has to do with exceptions to the citizen's rights to notice (that records have been requested) and to challenge. The Commission would have a rigid rule never to permit an Agency dispense with notice prior to obtaining records considered confidential. Justice/Treasury enumerates certain conditions when important societal interests override the privacy interests of the citizen. Their proposal includes the only reference to foreign intelligence which appears in the report (see page 111).

p 112
No. 4 - This question has to do with the relationship between privacy rules and judicial subpoenas. It is not a matter of major concern to us but I thought we should support the position which would do the least damage to established procedures for obtaining information relevant to cases in litigation. To quote the "Con" argument, "It will be confusing and burdensome to courts and litigants to create special procedures applicable only to those records in which the litigant has an expectation of confidentiality."

p 113
No. 5 - The question here has to do with reform of standards and issuance and use of information obtained by administrative summons. The Commission poses strictures far in excess of those in the Privacy Act, hence my suggestion that we support retention of the present law.

p 115
No. 6 - Here the subject is information obtained by Grand Jury. I am prepared to support Justice's position on this subject.

p 117
No. 7.A - The Commission made much of the need for a "paper trail" when the government requests records from the private sector. This particular question has to do with non-confidential information and on that subject it seems pointless to create a lot of burdensome paperwork, hence the vote for no "paper trail".

P.119 No. 7.B - This has to do with restricting Federal access to state and local government records. The options are requiring requests in writing with the requesting organization identified (so-called "letterhead request"), a compulsory process (subpoena), or (3) ~~on~~ the status quo of no paper trail.

P.120 No. 8 - This has to do with Federal restrictions on the information collection practices of state and local agencies. I have identified this as requiring Presidential decision in the closing paragraph of the draft of a letter to Neustadt. This is not a subject on which we would have to comment but I thought it useful to support the option which gives the States maximum latitude while still indicating the desirability that the States protect individual privacy.

P.124 No. 9 - This has to do with a reform of compulsory record keeping and reporting statutes. The Commission was concerned about "unreviewed executive discretion" and sought statutory limits. Justice voted for regulations rather than statutes, stating being that "the Commission's recommendations would unnecessarily impede the flow of information used for law enforcement purposes."

P.132-138 Part IV has to do with Federal record-keeping. A.1 discusses the Privacy Act and question 1. asks whether the administration should endorse revision in the Privacy Act. We have already discussed the desirability of deferring fundamental change.

Question A.(2) has to do with the applicability of the Privacy Act to recipients of Federal grants. Again, this doesn't affect us but I see no reason to support such extension.

Question A.(3) - The Commission would like to strengthen the "routine use" provision of the Act, making it more difficult for agencies to use this mechanism. It seems clear that we should oppose this step.

Question A.(4) - We have already created an overseer for our Privacy Act activities as suggested here, hence, my proposed support for the proposal.

Question A.(5) - This is a logical follow-on to A.(1) and self-explanatory.

P.146
25X1A Section IV.B. discusses the dangers inherent in the Electronic Funds Transfer (EFT) mechanism. I discussed this with [redacted] who suggested the position taken in the draft memorandum. The deletion of the words, "at this time" is suggested because they imply that this option should be of limited duration.

P.150
Speech only
for copy
Part V concerns three separate issues: the use of truth verification devices, a standard personal identifier and the privacy implications of research and statistical studies. In earlier letters to the task forces, I have argued for the retention of the right to use the polygraph and I think we should oppose legislation which would prohibit its use even if the prohibition applied only in the private sector. ✓

P.155 On V.B. the question is really whether to continue to rely on today's restrictions of the use of the Social Security number or to impose more stringent limitations. Opposition seems the right position for the Agency to take. to the latter choice

P.159 In V.C. the question is whether personal information may or may not be used in research situations where the individual is not the subject of the research. The option I have selected opposes such restrictions.

165-168 Part VI has to do with allocation of Federal privacy responsibilities.

Question 1. asks whether a new high level ^{office} should be established to police the Privacy Act. Question 3 would give some centralized entity authority to participate in privacy-related proceedings of other agencies and Question 4. would set up a complaint function to assist individuals on privacy-related problems. I think we should oppose all three of these.

Question 2. involves three new functions which can probably not be effectively opposed. They can be found on page 166.

Question 5. discusses the allocation of these new functions. ~~and where~~ I would vote against a new organization and in support of the use of Commerce, specifically the National Telecommunications and Information Administration, which has been the center of much of the work on this privacy initiative.

I hope the foregoing will serve to simplify your review of this complex proposal.

